

Shantilata Paride Vs. Nrusingha Ch. Behare and anr.

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Court : Orissa

Decided On : May-05-1998

Reported in : 1998CriLJ3237

Judge : S.C. Datta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 498A; Code of Criminal Procedure (CrPC) - Sections 125

Appeal No. : Criminal Revision No. 716 of 1994

Appellant : Shantilata Paride

Respondent : Nrusingha Ch. Behare and anr.

Advocate for Def. : D. Nayak, ;S. Swain, ;O.P. Pradhan, ;M. Mohanty and ;J. Pal, Advs. for No. 1 and ;Addl. Standing Counsel for No. 2

Advocate for Pet/Ap. : C.K. Mohanty, ;G.N. Namtoor and ;R. Mohanty, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

S.C. Datta, J.

1. This revision application is directed against order of the learned Judicial Magistrate First Class, Paradeep at Kujang acquitting the opposite party of the charge under Section 498A, IPC.

2. The prosecution case is founded upon the allegation that the petitioner and opposite party No. 1 entered into wed lock in Baladevjou temple at Kendrapara on 14-2-1989 according to Baidik form. All the rituals, such as, performance of home, hastaganthi etc. were gone into in presence of the parents and relations. The marriage between the parties was the sequel of a love affair between the parties. After marriage both the parties started their conjugal life at Dihabalarampur. Both of them stayed at Ersama also for sometime. At the time of marriage, there was no demand for dowry. But within two months of the marriage, the opposite party made a demand for motor cycle, T.V. and other articles as a part of dowry to the marriage. The petitioner's family having failed to meet the demand, the opposite party No. 1 even assaulted the petitioner and did not change his attitude towards her in spite of intervention of local gentlemen and relations. It is alleged that opposite party No. 1 had gone to the extent of snatching away gold ornaments out of the possession of the petitioner. He did not provide her food and denied the conjugal right to her. At last on 25-5-1990 at 10 p.m. the opposite party expressed his willingness to marry for the second time and the petitioner having protested, she was driven out from the house and threatened with dire consequence. Since then petitioner is residing in a separate house on rent at Erasama. On the basis of complaint a case was registered and eventually opposite party No. 1 faced trial before the learned Magistrate which, however, ended in acquittal.

3. The defence denied any marital relationship between the parties and as such, it was contended that there was no question of torture to the petitioner at all.

4. In order to bring home the charge, the prosecution has examined 11 witnesses and exhibited several documents. However, after going through the materials on record, the trial Court came to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt and accordingly, acquitted the opposite party of the charge under Section 498A, IPC.

5. Being aggrieved by and dissatisfied with the order of the learned Magistrate, the petitioner has come in revision. According to the petitioner, the evidence in galore to establish the fact of marriage between the parties. It has also been submitted that the prosecution succeeded in establishing the allegation of torture by the accused to the petitioner. According to the petitioner, learned Magistrate was wholly unjustified in returning a verdict of not guilty. Accordingly, the petitioner has prayed for setting aside the order of acquittal.

6. Heard learned counsel appearing for the parties.

7. The petitioner speaks of marriage between them at Baladev Jew Temple, Kendrapara, on 14-2-1989 in presence of parents and relations. It may be observed that the said marriage is said to be a sequel to a love affair between the parties. It is claimed that initially there has been no demand for dowry but within two months of the marriage, suddenly opposite party No. 1 started making demand for T.V., motor cycle and other articles as a part of dowry. This led to the entranged feeling between the parties and the opposite party even assaulted the petitioner several times and did not change her attitude in spite of intervention of the parents and relations. The opposite party has, however, denied the case of the prosecution regarding the marriage between the parties. It is claimed by the complainant that after marriage the parties started residing at Dihabalarampur and both of them have also' stayed at Erasama. P.W. 10 is the complainant herself. She speaks of marriage between the parties at Baladev Jew Temple on 14-2-1989 according to Baidik form. As noticed earlier, the opposite party has stoutly denied any form of marriage with the petitioner. P.W. 2 a close relation of the petitioner has come to corroborate the fact of marriage of the petitioner with opposite party No. 1. We find from his testimony that one Bishnu performed the marriage and Man Mohan Behore was Badralok in that marriage. Neither Manmohan nor the Priest Bishnu has been examined by the prosecution. It is also claimed that one Basudev Das was also present during the marriage. But this gentleman too has not been examined by the prosecution. P.Ws. 3 and 4 admit that they had not witnessed the marriage ceremony between the informant and the accused. Likewise, P.Ws. 5, 6, 7, 8 and 11 have no knowledge regarding the marriage. The petitioner has produced one certificate purported to have been issued by the

Executive Officer, Baldev Jew Temple showing the marriage between the parties this document has been marked as Ext. 7. The trial Court noticed that the issuing authority of Ext. 7 has not been examined by the prosecution. Moreover, P.Ws. 7 and 8 the employees of Baldev Jew Temple deposed that they do not know either the informant or the accused. Learned trial Court observed that Ext. 7 has not been properly proved by the prosecution and that too quite rightly. The trial Court also could not rely upon Ext. 9, the certified copy of voter's list showing the name of the accused as the husband of the petitioner firstly on the ground that the person who has prepared it has not been examined and secondly on the ground that there is no evidence to show that the accused Nrusingha is the only Nrusingha in the village Dihabalarampur. According to the learned counsel appearing for the opposite party the proof of marriage in a proceeding under Section 125, Cr. P.C. is different from, that in a case under Section 498A, IPC. It may be observed that a proceeding under Section 125, Cr. P.C. is summary in nature and as such, strict proof of marriage is not necessary. But in order to sustain a conviction under Section 498A, IPC the same principle cannot be extended and strict proof of marriage is required to be established before a conviction can be recorded.

8. The petitioner has spoken of a Panchayat for resolving the dispute between the parties but none of the panch members has been examined by the prosecution. Moreover, the evidence of P.Ws. 3 and 4 who spoke about holding of panchayat are at variance. It has been alleged that the matter was reported to the. Police regarding the alleged torture meted out to the petitioner but neither the entry in the Police case diary nor the FIR has been called for nor any Police Officer has been examined to establish the fact. The judgment of the trial Court was thoroughly scrutinised. It cannot be said that the finding of the trial Court on the point of marriage is either unjust or unreasonable or perverse and as such, interference in revision by this Court is impermissible in law. Consequently, the finding of trial Court on the point of marriage cannot be disturbed in this proceeding. Since one of the main ingredients of the offence has not been established it seems that the accused has been rightly acquitted by the trial Court. It may be observed that in a revision application against order of acquittal passed by the trial Court, there must be material to show that the judgment was perverse or contrary to evidence

adduced by the prosecution. The scope of revision is very limited. As has been discussed above, the prosecution has been unsuccessful in establishing the marriage between the parties. So no interference is called for. In that view of the matter, the revision application fails and is dismissed.

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